IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No. 20988 OF 2006

Between:

M/s.K.C.P.Sugar and Industries
Corporation Limited, Vayyuru.

..... PETITIONER

AND

1. The Commercial Tax Officer,
   Vuyyuru and 2 others.

....RESPONDENTS

O R D E R **(Per Sri Justice J.Chelameswar)**

The petitioner, a limited Company and a registered dealer under the A.P. General Sales Act and Central Sales Tax Act, carrying on the business of manufacture and sale of sugar and its by-products.

2. During the assessment year 2002-03, the petitioner sold Ethnol to M/s. Indian Oil Corporation Limited, Hyderabad, against Form 'G' to be issued by the purchaser. When the liability of the petitioner for the above mentioned assessment year for tax under A.P.G.S.T. Act came to be taxed at a concessional rate, a claim made by the petitioner was rejected by the assessing authority on the ground that the petitioner did not produce 'G' Forms from the above mentioned purchaser.

3. In the meanwhile, the Government of Andhra Pradesh issued G.O.Ms.No.603 Revenue, Dated 14-05-2003, reducing the rate of tax to 4% on Ethanol under the A.P.G.S.T. Act.

As the said G.O. only reduced the rate of tax with effect from the date of G.O., it appears, the petitioner and others represented to the Government to reduce the tax with retrospective effect, which plea was accepted by the Government and the Government issued G.O.No.544, dated 27-04-2005 giving retrospective effect to the above mentioned G.O.Ms.No.603, dated 14-05-2003 with effect from 21-10-2002.

4. It appears that the petitioner paid entire amount of tax

pursuant to the assessment order mentioned above. But in view of the subsequent G.Os. he filed a petition before the 1st respondent-The Commercial Tax Officer, Vuyyuru, requesting for refund of the excess tax paid by him. The petition was rejected by the 1st respondent by an endorsement dated 30-8-2005. The relevant portion of the endorsement reads as follows:

> "The dealers M/s. K.C.P. Sugar Industries Corporation Ltd., Vuyyuru have filed a letter on 28-07-2005 along with G.O.Ms.No.544 Rev. (CT), II Dept. dated 27-04-2005. As per the Government Order reduced sales Tax on the sale of Annydeous Alcohol i.e., Ethnal to 4% giving retrospective effect with effect from 21-10-2002 to 31-03-2005. The dealers requested to refund the amount of Rs.11,78,745/- of excess payment for the year 2002-03.
>
> In view of the above the final assessment of the dealers for the year 2002-03 under A.P.G.S.T. Act was completed by the CTO-Vuyyuru on 28-10-2004 and it was got served on the dealer. Hence, the request of the dealer to give tax relief on completion of final assessment as per the C.O. by the Commercial Tax Officer cannot be complied with."

5. The petitioner filed an appeal against the said endorsement before the 2nd respondent-The Appellate Deputy Commissioner of Commercial Taxes, Vijayawada. The said appeal was dismissed on the ground that it was not maintainable. According to the appellate authority, appeal under Section 19 (1) of the A.P.G.S.T. Act is not maintainable against the endorsement such as the one it was the subject matter of the appeal. Hence, the present writ petition.

6. In somewhat similar case, this Court has already held in

W.P.No.15882 of 2006, dated 01-08-2006, for the reasons recorded therein, that an appeal would lie even against an endorsement such as the one in question before us made by the 1st respondent.

7. In the circumstances, we deem it appropriate to direct the 2nd respondent to re-entertain the appeal, consider the same on merits and dispose it of in accordance with law, within a period of eight weeks from today.

8. With the aforementioned direction, the Writ Petition is accordingly disposed of. No costs.

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J.CHELAMESWAR,J

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November 08, 2006 **D.APPA RAO,J**

Note:
Issue C.C. by 13-11-06.
B/o.
KVR